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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 10576/2018 & CM No.41230/2018

IKEA TRADING (INDIA) PRIVATE LIMITED .... Petitioner

Through : Mr. Ashok Dhingra, Mr. Madhur Dhingra and Ms. Shubham Gupta, Advs.

versus

THE COMMISSIONER, DEPARTMENT OF TRADE AND TAXES GOVERMENT OF NCT, DELHI ..... Respondent

Through : Mr. Ramesh Singh, Standing Counsel for GNCTD with Mr. Chirayu Jain and Ms. Nikita Goyal, Advs. along with Mr. Vimal Diwakar, AA, Deptt. Of Trade and Taxes.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **12.11.2018**

The writ petitioner's objection to the impugned order, made by the Special Commissioner on 24.08.2018, is premised upon the chequered history. Rather than narrating the entire sequence of events, it would be useful to notice at this stage that upon a limited remand, the Objection Hearing Authority (OHA) at the stage of first appeal, had remanded the questions urged by the petitioner to the Assessing Officer, who instead of confining itself to the matters remanded (i.e. permissibility of claims pursuant to Form H) chose to conduct a *de novo* assessment. In the meanwhile, the Objection Hearing Authority's order was under appeal. That appeal was disposed of on 02.07.2014 as infructuous but with strictures against the adjudicating authority for exceeding the remand. However, the consequential remand became the subject matter of a further objection which was decided on 24.08.2018.

The petitioner's submissions are two-fold : (i) that once the Tribunal made the observations with respect to the lack of jurisdiction of the Assessing Officer in exceeding the remand, no further adjudication was possible and (ii) that the OHA could have validly decided the appeal on or before 18.08.2018 given that a notice under Section 74(7) was served on the Special Commissioner on 03.08.2018.

As far as the first grievance is concerned, the Court is of the opinion that though the Tribunal made sweeping observations with respect to the lack of jurisdiction, at the same time, it could not have decided the merits of the second assessment order, made pursuant to the remand. With respect to the second objection, the court notes that the Special Commissioner, dealt with this contention and recorded the following observations :

> *"Before proceeding with the issues involved in this objection it is important to deal with DVAT 41 placed on record. The relevant rule 56 in this regard states that notice for the*

purpose of subsection 8 of section 74 shall be in form DVAT 41, the said notice shall be signed by the person making the objection and more importantly it has been provided that the said notice shall be served in person on the Commissioner or the Value Added Tax Authority deciding the objection. On careful perusal of the file it is observed that the said DVAT 41 was not served in person to my predecessor however he has taken cognizance of DVAT 41 received by his staff. In all fairness of things since he was unable to decide the said objection therefore he has sent the file to Commissioner for deciding the objection by some other OHA in the absence of necessary delegation of power u/s. 68 of DVAT Act to him, as he has recently joined the department. Secondly, when the matter was heard by undersigned after receipt of file on 10-08-2018 it became clear to the objector on 14-08-2018 that the undersigned OHA is going to decide the said objection however, no notice in DVAT 41 as required by rule 56 was served in person to the undersigned. On these grounds the legality of DVAT 41 placed on record is not maintainable and hence cannot be treated as legal and proper notice as required u/s 74(8) of DVAT Act read with rule 56 of DVAT Rules. The above said rule of service of DVAT 41 in person has also been considered by VAT Tribunal and necessary orders in that regard in favour of revenue has also been passed."

This Court is of the opinion that the reasons adduced by the Special Commissioner in the circumstances of the case are persuasive and reasonable given that at the stage when the OHA received the notice, he does not appear to have been delegated with the powers under Section 68 of the DVAT Act. However, on the merits of the impugned order, the court is of the opinion that the Special

Commissioner has not applied her mind to the limited scope of the remand which the first OHA order had required.

In these circumstances, the Special Commissioner is directed to decide the issue as expeditiously as possible having regard to the scope of the remand, made by the order of 13.11.2013, by the Special Commissioner while deciding the objection in the first instance against the first assessment order.

Depending upon the final outcome of the proceedings, pursuant to this remand, in case the petitioner is aggrieved by the consequential order – not limited to the issue of Form H (having regard to the facts of the case and intervening events), it is open to it to agitate the same before the Tribunal.

This writ petition is partly allowed in the above terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

NOVEMBER 12, 2018
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